

**Amendment No. 5 to HB1189**

**Clemmons**  
**Signature of Sponsor**

**AMEND Senate Bill No. 1180**

**House Bill No. 1189\***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. This act shall be known and may be cited as the "Tennessee Infants Protection Act."

SECTION 2. Tennessee Code Annotated, Section 39-15-201(c)(3), is amended by deleting the subdivision in its entirety.

SECTION 3. Tennessee Code Annotated, Title 39, Chapter 15, Part 2, is amended by adding the following new sections:

**39-15-211.**

(a) As used in this section and in § 39-15-212:

(1) "Abortion" means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus;

(2) "Gestational age" means the age of a embryo, fetus or child as measured from the first day of a female's last menstrual cycle to the date on which such age is measured;

(3) "Medical emergency" means an acute injury or illness, physical, mental, or otherwise, that poses an immediate risk to a person's life or long-term health;

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(4) "Pregnant" means the physical condition of a female having an embryo, fetus, or child developing in her uterus after a fertilized egg becomes implanted in her uterus;

(5) "Serious risk of the substantial and irreversible impairment of a major bodily function" means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function. Such conditions include pre-eclampsia, inevitable abortion, and premature rupture of the membranes and, depending upon the circumstances, may also include, but are not limited to, diabetes and multiple sclerosis; and

(6) "Viable" and "viability" mean that stage of fetal development when a child is capable of sustained survival outside of the womb, with or without medical assistance.

(b)

(1) No person shall purposely perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman during viability, as determined by a licensed medical professional possessing the relevant information, education, experience, and knowledge necessary to make such a determination.

(2) It shall be an affirmative defense to any criminal prosecution brought under subdivision (b)(1) that the abortion was performed or induced, or attempted to be performed or induced, by a licensed physician and that the

physician determined, based upon the facts known to the physician at the time, that:

(A) The pregnancy was not viable;

(B) The fetus was not viable;

(C) The abortion was necessary to prevent the death of the pregnant woman or to prevent serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman. No abortion shall be deemed authorized under this subdivision (b)(2)(C) if performed on the basis of a claim or a diagnosis that the woman will engage in conduct which would result in her death or substantial and irreversible impairment of a major bodily function or for any reason relating to her mental health; or

(D) The pregnancy is the result of rape or incest.

(3) Except in a medical emergency that prevents compliance with the viability determination required by § 39-15-212, the affirmative defenses set forth in subdivision (b)(2) do not apply unless the physician who performs or induces, or attempts to perform or induce, the abortion makes a viability determination, if applicable, and certifies in writing that any of the circumstances set forth in subdivisions (b)(2) apply.

(4) Except in a medical emergency that prevents compliance with one (1) or more of the following conditions, the affirmative defense set forth in subdivision (b)(2)(C) does not apply unless the physician who performs or induces, or attempts to perform or induce, the abortion complies with each of the following conditions:

(A) The physician who performs or induces, or attempts to perform or induce, the abortion certifies in writing that, in such physician's

good faith medical judgment, based upon the facts known to the physician at the time, the abortion is necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;

(B) The physician performs or induces, or attempts to perform or induce, the abortion in a hospital that has appropriate neonatal services for premature infants. This requirement does not apply if there is no hospital within thirty (30) miles with neonatal services and the physician who intends to perform or induce the abortion has admitting privileges at the hospital where the abortion is to be performed or induced;

(C) The physician who performs or induces, or attempts to perform or induce, the abortion terminates or attempts to terminate the pregnancy in the manner that provides the best opportunity for the unborn child to survive, unless that physician determines, in such physician's good faith medical judgment, based upon the facts known to the physician at the time, that the termination of the pregnancy in that manner poses a significantly greater risk of the death of the pregnant woman or a significantly greater risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman than would other available methods of abortion; and

(D) The physician certifies in writing the available methods or techniques considered and the reasons for choosing the method or technique employed.

(5) For purposes of this section, viability shall be determined by a licensed medical professional possessing the relevant information, education, experience, and knowledge necessary to make such a determination.

(6) An intentional violation of subdivision (b)(1) is a Class C felony.

(7) The applicable licensing board shall revoke the license of any person licensed to practice a healthcare profession in this state who intentionally violates subdivision (b)(1), in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, without regard to whether the person has been charged with or has been convicted of having violated subdivision (b)(1) in a criminal prosecution. In any proceeding brought by the board of medical examiners or the board of osteopathic examination to revoke the license of a physician for violating subdivision (b)(1), a physician who has not been convicted in a criminal prosecution of having violated subdivision (b)(1) may raise the affirmative defense set forth in subdivision (b)(2).

(8) A pregnant woman upon whom an abortion is performed or induced, or attempted to be performed or induced, in violation of subdivision (b)(1) is not guilty of violating subdivision (b)(1), or of attempting to commit or conspiring to commit a violation of subdivision (b)(1).

(c) Neither this section nor § 39-15-212 repeals or limits § 39-15-202, § 39-15-209, or any other law that restricts or regulates the performance of an abortion or attempt to procure a miscarriage.

**39-15-212.**

(a) Except in a medical emergency that prevents compliance with this subsection (a), no physician shall perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman after viability, unless, prior to the performance or inducement of the abortion, or the attempt to perform or induce the abortion, a medical professional possessing the relevant information, education, experience, and knowledge necessary to making such a determination, determines that the pregnancy or fetus or child is not viable.

(b) Except in a medical emergency that prevents compliance with this subsection (b), no physician shall perform or induce, or attempt to perform or induce, an abortion upon a pregnant woman after viability, as determined by a medical professional as described in subsection (a), without first confirming the determination made in subsection (a) and the associated findings of any medical examination and resulting from a determination described in subsection (a) in the medical record of the pregnant woman.

(c) A violation of subsection (a) or (b) is a Class A misdemeanor.

(d) The appropriate licensing authority shall consider suspension, for a period of not less than six (6) months, of the medical license of a physician who violates subsection (a) or (b).

SECTION 4. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 5. This act shall take effect July 1, 2017, the public welfare requiring it.